IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 891 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TOFIK ALIAS RAJA ABDUL GAFAR KHILAJI THRO'MOTHER SUBIABIBI

Versus

R D MANKADIA DEPUTY COMMISSINOER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

RULE SERVED for Respondent No. 1

Mr. H.L. Jani, APP for Respondent No. 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/12/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. Anil S. Dave, for the petitioner and learned A.P.P. Mr. H.L. Jani, for the respondents.

1. The petitioner has challenged the order of externment dt. 16-06-2000 passed by the respondent no. 1- Deputy Police Commissioner, Ahmedabad City, Zone-III against the petitioner in excercise of powers conferred under Section 56(b)of the Bombay Police Act, 1951 ("the Act" for short), whereby the petitioner is externed from the area of Ahmedabad City and the limits of area comprised under the powers of Polce Commissioner, Ahmedabad as well as from the contiguous area of Ahmedabad District, Gandhinagar District, Kheda and Mehsana District.

The petitioner has also challenged the order passed by the Deputy Secretary State of Gujarat, Home Department, Sachivalaya, Gandhinagar under Section 60 (3) of the Act, whereby the appeal preferred by the petitioner against the impugned externment order has been rejected.

2. That the petitioner was served with the show cause notice under Section 59 of the Act by Assistant Police Commissioner, " D" Division, Ahmedabad dt. 19-09-1999 alleging the fact that the petitioner has been collecting instalments from the merchants having shops in the area of Mirzapur and has been evading payment of the articles purchased. That the petitioner has been showing knife and using force with the help of the accomplice against those merchants who dared to claim money for the articles sold. That the petitioner has been travelling in autorickshaw without making payment of the fare and offence vide CR. 130/98 has been registered at Karanj Police Station for the offence made punishable under Section 329, 506 (1), 323 and 504 read with Section 114 of the Indian Penal Code and also under Secrtion 135 (1) of the Act. That another case is registered at Shahpur Police Station vide II CR 3016/99 for the offence made punishable under Section 506(2), 294 (B), 188 read with 114 of the Indian Penal Code and also under Sec 135 (1) of the Bombay Police Act.

3. On the basis of the said material the petitioner was called upon to show cause why the petitioner should not be externed for a period of two years from the stipulated area as the petitioner has been terrorising the people of the locality and those people are afraid to come forward to file any complaint against the petitoner or to give evidence against the petitioner. The petitioner appears to have replied to the said notice by letter dt. 15-10-1999 and has examined the witnesses to rebut the alegations put forward against the petitioner. That thereafter, in consideration of the material, the

respondent no.2- the Deputy Police Commissioner, Ahmedabad City, Zone III passed the impugned order dt. 16-06-2000 of externment against the petitioner. The petitioner has challenged the order under Section 60 of the Act. However the Deputy Secretary vide order dt. 16-09-2000 rejected the appeal of the petitioner and confirmed the order of externment. Both the orders are challenged by the petitioner by way of the present petition.

4. Learned Advocate Mr. A.S. Dave has assailed the order on the ground that the impugned order of externment is passed after an inordinate delay of more than six months. It is submitted that in view of the observations made by this Court in the matter of CHOTHMAL SAGANSINGH RAJPUT VS. STATE OF GUJARAT, reported in 1989 (1) GLR P.63, and as such, order is bad in law and deserves to be quashed and set aside.

5. It would be pertinent to note that show cause notice against the petitoner has been issued on 19-09-1999. That the proceedings against the petitioner commenced on 15-10-1999 and thereafter nothing is shown in the order and impugned order of externment is passed on 16-06-2000. That the order is devoid of any explainantion as to how and on whose fault the delay in passing the order has occasioned.

6. It would be worthwhile to note that rule was issued earlier on 11-10-2000. Despite due service, none of the respondents have filed affidavit in reply to rebut the allegations made in the petition or to explain the delay. The fact apparent from the record per se suggest that the impugned order of externment has been passed after more than six months from the closing of the proceedings before the authority and that there is no reasonable explanation for such delay.

7. On the basis of the aforesaid discussion, applying the observations made by this Court in CHOTHMAL'S case (Supra) to the facts summarised hereinabove, the impugned orders cannot be sustained and deserves to be quashed and set aside.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other grounds raised and canvassed at the Bar.

9. In the result the petition is allowed. The impugned order of externment dated 16-6-2000 passed by the respondent no.1 in Externment Case

no.PCB/HDP/PUBLIC/149/2000 against the son of the petitioner, namely Tofik alias Raja Abdul Gafur Khilaji as well as the order passed by the appellate authority dated 16-9-2000 under Sec.60 of the Act rejecting the appeal of the son of the petitioner against the externment order are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

stanley-akt.